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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,145	05/25/2001	Richard Alan Haase		4449

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EXAMINER

BARRY, CHESTER T

ART UNIT PAPER NUMBER

1724

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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The reply filed on 1/31/05 is not compliant with 37 CFR 1.173. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

The amendment to the claims filed 1/31/05 fails to comply with 37 CFR 1.173 (b) and (c). The pertinent portions of 37 CFR 1.173 are reproduced below.

§ 1.173 Reissue specification, drawings, and amendments.

(b) *Making amendments in a reissue application.* An amendment in a reissue application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made, as follows:

(2) *Claims.* An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," etc., should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) of this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text of the claim.

(c) *Status of claims and support for claim changes.* Whenever there is an amendment to the claims pursuant to paragraph (b) of this section, there must also be supplied, on pages separate from the pages containing the changes, the status (*i.e.*, pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes made to the claims.

To the extent that the right-most column of the table appearing at page "6 of 17" of the paper filed 1/31/05 is correct, i.e., that claims 1, 4 – 8, 10 – 13, 15 – 19, 21, 39 were not changed by the 1/31/05 paper, the paper filed 1/31/05 fails to comply with 37 CFR 1.173(b)(2). The rule regarding a parenthetical expression, e.g., "amended," "twice amended," etc., following the claim number applies only to claims changed by the paper in which the claim appears. See 37 CFR 1.173(b)(2) statement on this point:

***For any claim changed by the amendment paper***, a parenthetical expression "amended," "twice amended," etc., should follow the claim number.


(emphasis added). The 1/31/05 paper fails to comply with 37 CFR 1.173(b)(2) because applicant represents that claims 1, 4 – 8, 10 – 13, 15 – 19, 21, 39 were not changed by the 1/31/05 and yet they bear parenthetical expressions noting how many times these claims have been amended. Moreover, even if these claims were amended by the 1/31/06 paper, at least claims 16 – 21, 39 would not comply with the rule for recital of parenthetical expressions not limited to how many times a given claim had been amended, e.g., "previously added" (claims 16 – 21, 39) and "previously amended" (claims 19, 21). Unlike original applications, for which 37 CFR 1.121 is the applicable rule, such parenthetical expressions have no place in reissue applications.

The 1/31/05 paper fails to comply with 37 CFR 1.173(c) for want of "an explanation of the support in the disclosure of the patent for the changes made to" claim 9. Specifically, applicant failed to state on page "6 of 17" or elsewhere in the 1/31/05 paper where in the original disclosure, i.e., which column and line of the patent, the

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examiner and public could find support for "300." Alleging that "350" was a typographical error does not point to where there is support for the value "300."

The 1/31/05 paper fails to comply with 37 CFR 1.173(c) for want of "the status (*i.e.*, pending or canceled), as of the date of the amendment, of all patent claims and of all added claims." Specifically, applicant failed to state on page 6 or elsewhere the status of claim 39. The status choices are simply, "pending" or "canceled." The choices do not include "previously added." It is noted that a claim alleged to be "previously added" is not necessarily still pending. Note, for example, that claims 22 – 38 were at one point added previous to 1/31/05, and as of that date were indeed not pending.



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PRIMARY EXAMINER

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